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SPEECH

OF

Hon. W. W. KETCHAM

Delivered in the Senate of Pennsylvania, March 18, 1861,

On the Bill Authorizing the Auditor General to settle t
Accounts of the Delaware and Hudson Canal Company.

DELAWARE AND HUDSON CANAL COMPANY.

The question being on the proviso offered to the bill by Mr. CLYMER, the nator from Berks, Mr. KETCHAM said:

Mr. Speaker: In the multitude of demands upon my time, I have had no oppor- ıity since the consideration of this bill was suspended several days ago to prepare /self for its discussion. But as it has been some time pending, and has yet to ss the House to become a law, I will proceed with it, trusting to my recollection facts and the fortune of the moment, for their use in its support. In the be- ıning, I desire it understood by the Senate that I have no personal interest in this l. I do not, and never expect, to own a dollar of stock in this company. I am t their attorney or agent; I sustain no relation whatever to them save that of a nator representing their interests in common with the interests of my constituency Luzerne county. I am not certain even that I know a man who is a stockholder the company. I called up this bill originally as I have called up many other bills, the request of a friend, to accommodate him. I examined its merits, and became isfied that it was proper and just, and assumed the charge of it, expecting no con- t over it, and having no interest in it further than the accommodation of my friend. ıt I must confess I resume its consideration to-day with some feeling, and with an erest I never expected to have for its passage. Beside the merits of the bill, the se position in which the company has been placed before the Senate and the State large, requires of me that it should be fully discussed, and the character and posi- n of the company vindicated. The Senator from Berks, either partaking of that l dark-day prejudice which would have kept us dependent upon Conestoga wagons l stage coaches for transportion and travel, that would have left us a century be- ıd all the world in everything which makes a State great and powerful—I say the nator either partaking of this prejudice and honestly actuated by a misguided zeal ıinst all corporations, or else operated upon by some outside influence, by some emy of the company pursuing ulterior purposes, without reference to the merits of s bill, made an attack the other day upon the company that overwhelmed the nate with astonishment. For the time Senators were terror stricken, and in their tremity exclaimed, "Good Lord, deliver us from this monster!" With a zeal, ergy and gallantry that would have done credit to St. George in his memorable ıtest with the dragon, he laid on and spared not; and with the bitterness and ma- nity of one especially commissioned to brand this company with eternal ignominy, denounced them as the very embodiment of selfishness, avarice, dishonesty and pression. He charged them with sucking up the substance of the State and cheat- ; her out of her rights; with accumulating vast wealth out of her generosity and lulgence, and then defrauding her in her financial extremity of the taxes justly e her, and held them up to the world with this odious sentence written on their ow—"immensely rich and immensely mean." This, in brief, is the character and ition which the Senator assigned this company. I do not know nor can I con- ve what motives could have actuated the Senator. I can hardly believe that he

himself fully realized the extravagance of his astonishing condemnation. I belie him, generally, a liberal man, though rather indiscriminate in his opposition to cc porations. There are some measures which have been before this Legislature f the benefit of corporations, that I have opposed myself. And I have opposed mai original Acts of incorporation. But I have no war to make against them becau they are corporations. They are like men, some of them good, and some bad Th are, at last, but men associated for a common purpose which individual effort ca not accomplish. They have done too much for the State; they have redeemed t many waste places; they have cleared away too many forests and subdued too mu wilderness and delivered it over to the dominion of peace, happiness, intelligen and virtue, and all the glories of civilization, for me to make war upon them. Th have done too much to develope the resources of our own great State, and to pla her in her present proud position, for me to make war upon them. They have giv us a million of our most valuable population, and a hundred millions of our wealt and while I tolerate no wrong in them, I cannot join in an indiscrin nate raid against them. Of the beneficent influence of corporations upon t State the Delaware and Hudson Canal Company has been among the n blest examples. I have lived nearly all my life within thirty three miles of Ca bondale, the centre of the coal operations of this company. I have been every d in familiar intercourse with the people of this locality and surrounding country, a with those of Wayne and Pike counties, through which their railroad and canal wi their way toward the Hudson. For more than twenty years Carbondale was the on market for the agricultural products of my county. Almost everybody in the cou try is as familiar with the operations of this company, as with those of their ov town. We have watched their progress from the first blow they struck in their bo enterprise, step by step, through all their vicissitudes, sometimes experimenting, i vesting and losing all; sometimes trying and succeeding; sometimes in disappoi ment and adversity, and then again in success and prosperity; at one time dishea ened, and at another elated, but never despairing, till at length they have triumph in their present commanding position. While the country has beheld their progre it has also marked its own progress, and how much it owes to this very company for prosperity. In 1823, when Maurice Wurtz, that model of enterprise and usefulne that great projector and benefactor, whose memory will be cherished by north-easte Pennsylvania as long as the rumbling of a car or the blast of a boatman's horn shall heard among her mountains—I say when he first conceived the idea of developing t coal in that northern field, all northern Luzerne, and Wayne and Pike counties, we almost an unbroken wilderness. The company commenced their works, the canal w hewn through the rocks, and walled up in the rivers, from the Hudson to the Lack waxen. Their railroad was stretched over mountain and gorge on to Carbo dale. The coal that had lain useless in the earth for ages was brought to t light and made an element of commerce to cheer and bless mankind. Carbo dale began to grow up; Honesdale and numerous other towns along the line their improvement sprung up, and the solitude of the forest gave way to t cheerfulness and animation of business. The unknown land was explore population in pursuit of business and homes gathered here; the land was tak up and cleared; the lumberman, farmer and mechanic succeeded each other, a kept even pace with the progress of the company as they widened the circle of th operations, and grew strong. So progressed, so has grown the country, until C bondale has become an incorporated city, and Honesdale (the county seat of Way county) one of the most flourishing towns in Northern Pennsylvania, built up a supported alone by the business of this company. And Northern Luzerne has l come one of the most densely populated portions of the State, full of industry, ent prise, wealth and prosperity. And Wayne and Pike counties have taken rank wi the most respectable counties in the State; distinguished for their business, ent prise and intelligence; with their schools at every cross road, and their villages

ery valley. All this has sprung up, directly and indirectly, from the enterprise id liberality of this company. And more than all this, the country unites in its stimony to their proverbial honesty and fairness. Fortunate, indeed, is the private dividual who succeeds for thirty eight years in a large business and comes off ith so fair a reputation. The Senator from Berks, unable to find anything unjust, even improper, in the bill under consideration, impelled by some infatuation, assum- that at all events the company must be opposed and assailed, whether right or rong. And to accomplish this purpose he has gone back to 1852, and in his anti- arian researches, dragged out from its dust and cobwebs the report of a committee pointed by the Legislature to examine into the affairs of the company—a matter iginated and concluded eight or nine years ago—and although the company were lly vindicated by the committee, and their honesty and fairness sanctioned and irmed by the solemnity of legislative enactment, on full investigation, yet, know- g that resurrections are at least wonderful, and that ghost stories will bear any ount of enlargement, and their chief merit consists in their startling unlikely- od, he went back to an old legislative record, and finding there a great deal of atter, in itself plain, simple, and to every fair mind conclusive of the integrity of e company, yet, determined to find guilt, whether any were there or not, and as- ming that everything that appeared in favor of the company was false, and every- ing against them of course true, by perversion, misinterpretation, and misrepre- ntation, has converted a solemn legislative sanction into just as solemn a condemna- n. Let us inquire into the charges of the Senator. It is true all this is entirely elevant to this bill; but it has been dragged forth from its repose to libel this mpany, and justice requires that whatever wrong impression it has made should be rrected. And although there has already been much said of the legislation of this ate in relation to the company, it is necessary to a fair understanding of the mat- that it should be briefly referred to again. Maurice Wurtz, to whom I have al- dy alluded, stimulated to a laudable emulation by the enterprise of the pioneers the Lehigh and Schuylkill coal fields, had gone up into the wilderness of Northern zerne, and discovered coal there. The developments and transportation of this luable mineral was an undertaking beyond the means of himself or any other in- vidual. Pennsylvania capital was already largely invested in the lower coal fields, d through one disaster and another necessarily resulting from inexperience in the secution of an undertaking so great, and at that time so little understood, the irit of adventure in Pennsylvania had become pretty well discouraged. Philadel- ia had but little sympathy with an investment that must furnish business to New rk, and find its profit chiefly in a trade with that city. So he turned his hopes to w York for the aid that he could not hope for in Philadelphia; and as a guaranty New York capital that the Pennsylvania Legislature would meet it with that spirit liberality and encouragement which alone could render its investment secure and objects feasible, he came to the Legislature of his own State, and procured the lowing enactments:

On the 13th of March, 1823, the Legislature of the State passed an Act entitled Act to improve the navigation of the river Lackawaxen. (Acts, 1822–23, pages 2–84.) It consists of eighteen sections. I will not take time to refer to the pro- ions of this Act in detail, but content myself, for the purposes of this discussion, h presenting to the Senate in a summary, from so much of it as has been brought question by the Senator from Berks—so much as will clearly show the franchises nted to Mr. Wurtz with the conditions upon which they were granted. Because s upon the enjoyment of these franchises and the fulfillment of these conditions, t all controversy had arisen.

The franchises granted him were

1st. The right to make a descending or slack water navigation from the head wa- s of the Wallenpanpack on the West Branch of the Lackawaxen, to the mouth of Lackawaxen.

2nd. The right to use, lease or sell the water power of the Lackawaxen and of t Branch he should adopt for improvement for manufacturing purposes.

3d. The right to charge three cents per mile per ton, for every thing transport down the descending navigation, except lumber, and a cent and a half per mile f every 1,000 feet of board measure of lumber, and for every ton weight of shingl or other materials in rafts.

4th. If he should build a slack water navigation, he had the right to charge each lock 12½ cents per ton on all tonnage except lumber, and half that sum for ea 1,000 feet of lumber and boards, ton weight of shingles or other materials in raf

5th. The right to receive after the first five years, fifteen per centum on the capi sum invested in the construction of the work, if these tolls shall produce nett pro enough to divide that rate, and if they should not produce nine per cent the right raise said tolls so as to produce nine per centum per annum.

These are the grants. They were made upon the following condition : at the e piration of thirty years (in 1853) from the passage of this Act, the said Mauri Wurtz, his heirs and assigns, shall render under oath or affirmation, to the Legisl ture, an exact account of money expended by them in making said navigation and keeping the same in repair, and also of the amount of tolls received by them duri that time, and if it shall thereupon appear that the tolls during that time ha amounted to so much over six per centum per annum on the amount of moneys expended in making and keeping in repair said navigation, as will be equal to the ca ital sum so expended, then the Legislature may assume all the rights liberti and franchises hereby granted, and if it shall appear that the tolls during that ti have not amounted to so much above six per centum per annum on the amount moneys so expended in making and keeping in repair said navigation, as will be equ to the capital stock so expended, then it shall be lawful for the Legislature, on pa ment to said Maurice Wurtz, his heirs or assigns, of the difference or deficiency, resume all the rights, liberties and franchises hereby granted, and in case of resum tion the Legislature shall be bound to fulfil all and singular the obligations enjoin by this Act on Maurice Wurtz, his heirs and assigns.

With this Legislative encouragement Maurice Wurtz went to New York city, a soon awakened interest enough in his enterprise to form an association of capitalis who, with himself at their head, made application to the new York Legislature fo charter to incorporate a company to build a canal and railroad to carry the coal market. And as an illustration of the prejudice and the difficulties he had to e counter,it may not be uninteresting to state here that before he could get the Leg lature of New York to take notice of a project apparently so visionary as that chartering a company to build a canal from the Hudson to the Delaware, to bri "black stone" from Pennsylvania to New York city, (for fuel,) a project so wild their estimation, that they thought him little better than a madman for entertaini it, he was forced to send a team all the way from where Carbondale now is, in Pen sylvania, to Albany, with a load of anthracite coal, and then to procure a stove a build a fire in it, to prove to them that the coal would burn, that it was fuel, and n a dead, non combustible stone. And it is said that it required several days contin ance of a red hot stove, with a rousing anthracite fire, to convince them that all t heat did not come from the hickory wood originally used to kindle the fire But th became convinced that anthracite coal was fuel and would burn, and must prove, it has proved, a vast element in the happiness and civilization of the world. On t 23d day of April, 1823, just forty-two days after the passage of the Pennsylva Acts, the Legislature of New York passed "an Act to incorporate the President, Ma agers and Company of the Delaware and Hudson Canal Company." The eigh section authorizes them to construct and forever maintain a canal or slackwater na gation, from such a point on the river Delaware, in Pennsylvania, to such point the Hudson, through any one of the counties of Orange, Sullivan and Ulster, as s corporation shall judge best. The twelfth section authorizes them to receive su

lls as they think proper, provided such toll shall not exceed in the whole eight nts per ton per mile. The twenty-first section authorizes the company to purchase Maurice Wurtz all the rights, privileges and immunities granted to him by the gislature of Pennsylvania. Also, to purchase coal lands at the headwaters of the ckawaxen; and also to employ their capital to the improvement of the said river ckawaxen, in the same manner as the said Maurice Wurtz is authorized by the ove Act to do; and also to engage in transporting to market coal. This Act pass- 23d April, 1823, and fixed the capital stock at $500,000, in shares of $100 00.

On the 7th April, 1824, the Legislature of New York passed an Act increasing e capital stock to $1,500,000. On the 19th November, 1824, the Legislature of e same State gave the company banking privileges, to be exercised in the city of w York. On the 1st day of April, 1825, the Governor of Pennsylvania approved Act supplementary to the Act of 1823. The first section provides that by and th the consent of Maurice Wurtz, his heirs and assigns, it shall be lawful for the esident, managers and company of the Delaware and Hudson Canal company "to prove the navigation of the river Lackawaxen and any one of its branches, in the nner authorized and provided by an Act entitled "an Act to improve the naviga- n of the river Lackawaxen," passed 13th March, 1823. Under and subject to e conditions, restrictions, duties and obligations imposed upon said Maurice Wurtz, s heirs or assigns.

SEC. 2. Restricts said company from charging more than one cent and a half per a per mile.

SEC. 5. Provides that the property, real and personal, of said company, within s State, shall at all times be liable for its debts, and subject to taxation in like nner and as like property held by an individual or corporation now is or may be.

SEC. 6. Provides that this Act shall be of no force unless said company shall tify the Governor of their acceptance of it on or before the first of July, 1825.

April 20, 1825, the Legislature of New York, by an Act, granted the Delaware l Hudson Canal Company power to make a contract with Maurice Wurtz, his heirs assigns, or with any other person or persons, by which the improvement of the vigation of the Lackawaxen, according to the provisions of the Act of the 13th rch, 1823, passed by our Legislature, shall be secured.

On the 21st of June, 1825, the company by writing, signed by Philip Hone, Pre- ent, and John Bolton, Treasurer, signified their acceeptance of the Act of our neral Assembly, passed 1st April, 1835. The Act of Pennsylvania of 9th of Feb- ry, 1826, gave the company the right to build a canal in Pennsylvania, instead a slackwater navigation, as provided by Act of the 13th March, 1823. On the of April, 1826 a further supplement to the Act of 13th March, 1813, was pass- by which it was enacted "That it shall be lawful for the President and managers the Delaware and Hudson canal company to construct and maintain such railways other devices as may be found necessary to provide for and facilitate the trans- tation of coal to the canal by them to be constructed."

These, Mr. Speaker, are the Acts of Assembly of Pennsylvania and of New York, ler authority of which the Delaware and Hudson canal company exists. The Sena- says that they have used and enjoyed these rights and privileges, and violated the dition upon which they were granted to them; that they have defrauded the te of every right and benefit stipulated to result to her, under the condition upon ich she granted them their existence. That they have fraudulently prevented the te from assuming the works, according to the condition of the Act of 1823, and reby deprived her of a property worth more than a million of dollars. This is of the reasons assigned for opposing this bill. It is proposed to defeat this bill retribution to the Company for old delinquencies. Let us see what they are. the 3d of April, 1851, the Legislature of this State appointed Messrs. Penniman, rris and Walker a committee to investigate the affairs of this company, with erence to the resumption of the works, as per condition of the Act of 1823, and

to report to the next Legislature. In the performance of the duties assigned th they made a thorough examination of the affairs of the company, and in their port to the Legislature, made January 8, 1852, they ascertained that up to and cluding 1850, the entire cost of the works of the company, (i. e. the canal) in Pen sylvania, was $1,954306 31

That the receipts up to and including 1850, were 707,868 67

$1,246,437 64

leaving the sum of $1,246,437 64, as the amount which the State would have pay for the works, should she resume them under the Act of 1823. But the Se tor says this balance is not an honest exhibit. That though it may truly exhibit t actual cost and receipts, yet it is a result fraudulently produced by the company, deter or prevent the State from a resumption of the works.

From 1829, the year when the canal was put into operation, up to 1844, both clusive, the rate per ton per mile was one and a half cents per ton on the whole l of canal from Honesdale to the Hudson, 108 miles, and this is the maximum rate tablished by law in this State. From 1845 to 1850, both inclusive, the rates w different. On the Pennsylvania portion of the canal extending about twenty-f miles from Honesdale to the line of the State of New York, it was half per cent. ton per mile and on the New York portion remained the old rate, one and a half ce per mile.

Here, says the Senator, is the villainy of the matter. Here is the incontroverti and conclusive proof of the wholesale swindle. He can discover no reason for t reduction and difference of tolls, save to defraud the State. He cannot conceive any possible motive but dishonesty to show their works so badly in debt that the St would be deterred from the payment of the deficiency necessary to resume. If t Senator had been as familiar with the history of that part of the State, and with operations of the company, as some others, he would have seen from day to day a from year to year the reason why that reduction was made In the first place, up about 1844, no coal ever passed over this canal but the coal of the company. So was no matter what the nominal rates of their toll sheet were. They might as w have been one dollar or one mill, for they operated upon nobody and affected nob so far as the coal trade was concerned. One and a half cents was the maximum fi by the Pennsylvania Legislature, and as there had not been any business for toll operate upon, and no call for alteration or modification, the legislative rates as ori nally adopted, were retained. As to a charge upon the company's own coal, that ne was thought of nor contemplated until first mooted by the committee of investi tion. The idea of the company charging themselves with toll on their own freigl on their own canal, very naturally never occurred to them. If that had been c templated, they might, if disposed, have fixed their tolls on coal at any point be the Legislative maximum they chose, and could without sacrifice have kept them low that at the end of 30 years the State, if she became the owner of the wo would have been forced to pay their full value. As their own business up to 18 was the only coal business of much moment on the canal, they could have done without sacrifice.

That they kept their tolls up to the maximum until 1845, and from that time at a higher rate than the State on her own canals, shows most conclusively that th tolls were regulated without reference to any account with the State. It is suffici of itself to preclude the idea of fraud on the commonwealth. The reason of the duction was a compliance with the legitimate demands of business. Up to 18 scarcely a boat load of coal other than that belonging to the company had ever pas over this canal. About this time the New York and Erie Railroad had progres as far as Elmira, and this facility for reaching the new market of western New Y awakened into life a trade in coal by individuals—some purchasing of this compa and others mining their own coal in small operations by this time connected with

ppany's railroad and canal by lateral roads. In compliance with the demand of se small dealers, and to encourage this diversion of coal from competition with ir own in the Hudson river and New York markets, they put the tolls down on Pennsylvania portion of the canal, running from Honesdale to the New York e, near which they formed a connection with the New York and Erie Railroad; they uced the tolls to five mills. If you will look over the State toll sheets for that iod, and for years before and after, you will find that rate still higher than the te tolls, which averaged only about four mills on coal. It is well known that the siness will not afford much higher rates. The tolls on the New York section were reduced, because there was no individual coal trade in that direction to demand And again, the principal reason that induced the company to reduce the tolls on Pennsylvania division prevented their reduction on the New York division; that s the desire to encourage an individual coal business in the west and to discourage astward. I do not pretend to say to what extent this policy succeeded. I have had time to examine the statistics. But to end all question as to the motives of company in reducing their toll on the Pennsylvania division, let actual facts ak. In 1850 the Pennsylvania coal company began to ship coal to New York from wley to Rondout, over the Delaware and Hudson canal. They shipped that year hundred and eleven thousand tons. What rates did they pay? Did they pay half cent on the Pennsylvania division and a cent and a half on the New k division? No, sir; they paid fifty-two and a half cents for the whole dis-ce—one hundred and eight miles—less than a half cent per ton. Was this re-tion on the New York divi ion to cheat Pennsylvania? Again, ever since the render by the State of its rights to resume the work, and they have become abso-ly the company's own property, tho rates have steadily been reduced. Since 0 the coal of other parties sent over this canal has amounted to from half to three ths of a million tons a year; and, as I am informed, the tolls do not exceed three ls per mile on the whole canal. Is this to cheat Pennsylvania? How? Where he motive?

Here is the explantion of the motives that induced the reduction of tolls on the nsylvania Division that should be satisfactory and conclusive to every candid id. Here are reasons that account for it upon the legitimate principles of trade, tral, fair and honest, all summed up in this: a compliance with the popular de-d, an increase of business and an encouragement of individual enterprise calcula-to lessen rather than increase competition in their own market. What more nat-l, fair or politic motives could have induced it. In Heaven's name is not this ugh? Is not the Senator satisfied. But pray what would the State have gained he had got this canal for nothing? If the rate had been kept up to one and a cents per ton and no reduction of toll, still there would have been a deficiency bout six hundred thousand dollors. Will the Senator at this day advocate the cy of purchasing a fraction of twenty five miles of canal, even at $600,000?

But he has still another fraud. He says: "By deducting the amount fixed as a is of taxation in 1848, to wit: $1,437,290 20 from the amount sworn to in 1851 ill appear that in three years from 1848 to 1851, inclusive, they had increased r *capital stock* in Pennsylvania, exclusive of all other items, the sum of $833,-37. It is possible, aye, and highly probable, sir, that this great increase of tal stock from 1848 to 1851 was made designedly, for it was *then* the interest of company to swell up its stock in Pennsylvania to the highest possible figure, for reason, mark you Senators, (and then judge of its equity) that this capital stock esented the cost of the improvements, and that this cost our State was to be rged on the great day of settlement so fast approaching! But that day with all errors is passed, and now when it was thought that all these things were forgot-now, when the State has no longer a right to purchase or take these works, it is *interest* of this company, which ever does equity, to reduce the value of these ks; that is to come here and deny that they represent the amount of stock,

which their own treasurer, under his solemn oath, in 1851 swore they did. A what is their object in making this attempt? Nothing more and nothing less th to defraud this State of the taxes due her, and thus deprive her of the last only re nant she still retains of all that vast store of wealth which once was hers! In t *equitable* and just attempt this company is here to day asking the votes of the sw guardians of the rights and interests of Pennsylvania!"

Here he charges another fraud, asserting as probable that the statement of inve ments in 1851 was falsely magnified for the purpose of deterring the State from suming the work. It seems to have been difficult for the company to have done a business at all without becoming obnoxious to the charge of fraud. I suppose they had abandoned their business, let their works rot down and millions upon m lions go to decay, and desolation spread over all that country, they might have escap the charge. Certainly the Senator seems to think that the only thing they cou honestly do. At the time of their report in 1848, they had just cleverly commenc enlarging their canal between 1847 and 1851 that enlargement was chiefly acco plished, and they expended something over half a million of dollars; and alo with that enlargement of the canal there became necessary, also, a corresponding e largement of machinery—enlargement of coal breakers and lateral roads becam necessary; and between 1848 and the time at which the Committee of investigati appointed to inquire into the standing of the company, made their report here, t work had been gone through with. The Senator from Berks took neither time n pains to explain that between the time of the report made in 1848, when the co pany stated that they had invested $1,437,000 and the date of the report of inve ment to the Committee of the Legislature, this canal had been enlarged and its c pacity nearly doubled—that the coal breakers, etc., of the company had been rene ed and that about $700,000 had been expended. Here is where the discrepancy b tween the two reports is explained.

Let us hear what the Legislative Committee of investigation say of this canal far back as 1852, when we all yet had the canal fever, and then we shall know h much sympathy we should have for the Senators wailing over this ditch in 186 when all Pennsylvania is rejoicing that we have got clear of every mile of our ca and it is agreed by all men that we would have done well to have given them awa and, if need be, paid somebody for taking them. The Committee say (House Jou nal, 1852, vol. 2, page 26): "The policy of resuming the canal must be determin by the Legislature. It should be remarked, however, that the improvement wou be much less profitable in the hands of the State than it has been in the hands of t company. The two sections now form one canal, governed and directed by one set men, which requires energy and efficiency for the management of it In case of sumption, the State would have to appoint a set of officers for its own section, which cou not fail to be expensive and troublesome. The company would still own eighty-thr and a half miles of canal, and the railroad, running from Honesdale to the coal fie at Carbondalo and Archbald. Broken up under different management, this imp tant outlet for the mineral resources of the State could not be so economically a prosperously conducted as it now is under one. These views are based upon the su position that the company would continue to use the New York section of the can and the railroad in connection with the Pennsylvania section in the ownership of t State. No certainty, however, exists that the company would continue to use t Pennsylvania section, but, on the contrary, there is every reason to conclude that t company would seek a new connecting link between its railroad and the New Yo section of the canal, and thereby render the Pennsylvania section entirely useless And after going on and showing the different railroads already completed and in co templation, they conclude by saying: "It is thus demonstrated that if the State sh resume the canal, it will be useless and of no value. The tables in the report spe for themselves. The large profits which the company has made have been realiz from the sale of coal, and not from any business in which the State could embark

So much for this canal in the hands of the State. If the State could have re-ed it without the cost of a dollar, it would have been, as all her own canals have n, a curse to her, and long before this day have been given away. A wonderful fortune this Sate suffered in not buying this fragment of a canal for half a million give it away in six years. A terrible fraud surely upon the State to deprive her such a luxury!

So much for the fraud of a million!

Again, the Senator arraigns this company under the charge of unfairly withhold-from the State the corporation tax attempted to be levied upon it, under the Act 1840, from 1841 to 1848, both inclusive, and amounting to $84,148 70. This indeed, a large sum of money, and at that day of the State's embarrassment would, doubt, have been a very important item of relief. He says the company was rich abundantly able to pay, and it was thought in equity she should pay something the exhausted treasury of the State, and he fixes up this amount as the amount thinks the company should have paid. Well, it is very easy to say that somebody ich, and they should do this and they should do that, and to fix upon the amount y should do. But, the question is, how much did this company owe the State, what did they not pay that was due from them to the State?

By the Act of 1840 the Legislature of Pennsylvania laid a tax on the capital stock d in of all banks, companies and institutions incorporated by or in pursuance of law of this Commonwealth. Under this law the Auditor General settled an ac-nt against this company for taxes for the years 1841 to 1847 inclusive, and fixed balance due the State at $67,591 32, and the interest on same $16,557 38, alto-her $84,148 70, the amount above mentioned. The company appealed from the ision of the accounting officers of the State to the Supreme Court. Under the ision of Chief Justice Gibson, who delivered the opinion of the court, it was held t although this company had costly improvements in this State erected under the nse granted to Maurice Wurtz in 1823, and by the 5th section of the supple-ntary Act of April 1, 1825, "their property real and personal within this State, ll at all times be liable for their debts and subject to taxation in like manner as e property held by an individual or corporation now is or may be; yet, that the nsfer of this license to them did not make them a corporation under our law, and refore they were not liable to taxation under the Act of 1840. This was the emn adjudication of the highest judicial authority of the State—the decision of the preme Court that the company did not owe a dollar of this enormous amount to State. So much for withholding her dues from the State. It is enough for a pany to pay promptly what it owes; when this is done none have a right to plain.

n looking over the speech of the Senator, it would seem that he had taken it for nted that the chief object and the paramount ambition of this company was to de the payment of their debts, and to defraud the public Treasury, and that we e doing the State service and only justice by treating them as outlaws and visit-the vengeance of the Legislature upon them whenever opportunity may offer.—ere is nothing on their part to warrant any such assumption. There has been no e in which they have refused to pay their legal dues to the Commonwealth. He s the company are unwilling to deal equitably with the State and should expect equity from her. What is the ground of this complaint? They refused to pay taxes from 1841 to 1848, which the Supreme Court declared they were not liable pay. While other companies paid taxes for which they may have been liable, this pany did the same thing, and only refused to pay what they were not liable to . I do not know that there is anything so equitable in the payment of what is ther legally nor equitably due. I do not know that the honest farmers down in ks county ever volunteered to pay taxes which they were not bound to pay.—es have always been regarded as odious and oppressive. There is no people on th who have not, so far as they could do honestly, avoided their payment. But

whether they are liable or not, the idea seems to be that they ought to have been ble, and that now is the time to punish them for escaping so long. Hence the bi opposition to this bill. Hence the proviso that the Senator says he desires adop as preliminary to voting down the bill. Of course if this proviso is adopted friends of the bill must vote it down. For with the proviso, instead of secur justice for the company, it must oppress them with such burdens as no company the Commonwealth have ever borne. Let us examine this proviso :

Provided, That the President and Treasurer of the Delaware and Hudson Ca company shall, within thirty days from the passage of this Act and annually h after, on or before the first Monday of November in each and every year, repor the Auditor General of this Commonwealth, under oath or affirmation of said Pr dent and Treasurer the cost of all the works of said company within this State the amount so reported shall be subject to taxation as capital stock, in the same m ner and at the same rate, as the stock of companies incorporated by the laws of State is subject. And it shall be the duty of said company upon the declaration any dividend hereafter, to cause their Treasurer to retain out of such dividend pay into the Treasury of this Commonwealth the amount of State tax to which s portions of their capital stock may be liable."

The proposition contained in this proviso is to convert every dollar of investm which the company have made in this State in their works into capital stock. It to convert all the money they have invested in the original construction, repairs, terations and renewals of their works from a section of canal down to an Irishm pick or shovel ; it is to convert the account current of the company from the beginn to this day into capital stock and tax it as such. It is unfair, unjust and unequ It is taxing this company upon different principles and by a different rule from t by which any other corporation in the State is taxed. There is not another comp. of all their multitude and variety in this State that is taxed by this rule. Is Pennsylvania Central Railroad company taxed on its investment? What is its vestment? . t is its stocks, paid in and funded and unfunded debt. That which gone to construct and equip and work the road. No man will pretend that this co pany is taxed upon the debts it owes, upon the bonds it issues, or upon its fl ing debt.

In the exuberance of taxes in this State, burdened as it is with a greater amo and variety than any State we know, the ingenuity and fertility of the taxing br of the State has not yet ventured beyond taxing the stock of this company. Th are paying now a corporation tax on about $13,000,000, and they have about th times this amount invested in the road. Again, there is the Reading Railroad co pany. They have in their road an investment of about $25,000,000 twelve milli in stock, and the balance in bonds and floating debt. And yet with all this inv ment of about $25,000,000, they are taxed with a corporation tax only on the sto equal to hardly half the investment. And we may go on to the end of the cha and we will find that on an average the corporations of the State do not pay a cor ration tax on over fifty per cent. of their investments.

And this is enough ; this is their full share of the burdens of the State. But besi this they pay all the local taxes on their real and personal property at the same r as individual property-holders. They are paying a corporation tax to the State their privileges and franchises in a higher proportionate valuation than the real personal property of the Commonwealth, to say nothing of the bonuses paid for el ters and the uncertainty of their investments. The burdensome taxes of this St have prevented millions of capital from coming into it, and driven untold milli abroad for investment, and kept the State a century behind her true position in march onward to the high destiny nature has assigned to her.

In 1848 there was an Act of Assembly passed by this Legislature requiring company to report to the Legislature the amount of their investment in this St The same Act of Assembly required that thereafter the company should pay a tax

So amount of stock. At the time of their investment they reported that the cost n heir works in the State of Pennsylvania was $1,437,000. This amount the Le- nature fixed as the basis of taxation, and declared that upon such amount the com- fy should thereafter be taxed, and upon that amount they have been taxed from gi day to this, the company paying their taxes promptly and punctually. If you s the other corporations of this Commonwealth and their amount of investment, S then the proportionate amount of stock upon which they are taxed in this Com- Awealth, you will find, sir, that this much abused Delaware and Hudson Canal :pany is paying much more than her proportion of taxes—that she is paying to- la corporation stock tax on $1,437,000, and the total of her investment in the ie of Pennsylvania does not exceed $2,600,000. She is paying a corporation stock dupon more than half of her investment in this State, and you cannot find another oration in the Commonwealth which is paying more liberally.

ut it is said this company is rich and is declaring enormous dividends, and there- tl should pay any tax and submit to any imposition without complaint. I admit i for a few years this company did declare liberal dividends; but taking the num- yof years they have been in operation, from the beginning to the present, they l/ have not yet realized over seven per cent. on their investment, including the Bits of a bank they carried on for twenty years under a New York charter. They de made seven per cent. for themselves, and while they have done this, they have ised the hundred per cent., the principal investment upon which the seven per n has been made, through the community, blessing every department of life over greater part of three counties of the Commonwealth. But why single out this company, this pioneer in the development of the resources of the State? Is it an ince to be vigilant, enterprising, energetic and successful? Is it an offence that i were among the first that brought development and prosperity into the Northern t of the State? Is it an offence that this company, by a long, hard struggle and nearly paying for it, have attained an important position among the great enter- ns of the world? If it be a crime that they have blessed the State of Pennsyl- la with prosperity, and they are to be punished for it, why then it may be just to ect upon them this taxation which no other company bears.

nhere may be such a thing as avarice and oppression overleaping itself. While rcorporations of the State are prosperous, the country prospers and the coffers of eState are full, but break down or cripple the corporations, and you destroy all the olts of well managed (associate) capital, and well directed enterprise, energy industry. This company is contributing largely to the support of a large portion hhe population of the State, and has increased the taxable valuation of property millions upon millions, and has paid into the State Treasury hundreds upon hun- rs of thousands. But load it down with insupportable burdens; cripple its ener- n, destroy all motives for a continuance of its efforts, break it down, and your enue direct from the company is at an end; the value of property in all that quar- of the State degenerates, and your taxes upon real and personal property are cut and desolation succeeds thrift and prosperity.

ut I shall consume no more time on this proviso. Believing that this Senate is osed to do justice and deal fairly with all the companies and people of the State, bmit this question to the Senate, reserving what I have to say on the merits of ebill.

r. Speaker, the Senate having very justly voted down the proviso, I propose now pok briefly at the merits of the bill, and although in the beginning of the discus- n I stated the circumstances of its origin, and the object proposed to be accom- ed by it, yet, as several days have elapsed since then, it may not be improper to tll the principal points of that statement. In the year 1848, an Act of Assembly passed by the Legislature of this State, by which, among other things, the Dela- e and Hudson Canal company were called upon to make a statement to the Com- lwealth, under oath, of the amount, nature and value of property held by them

in the State of Pennsylvania; and by the same Act a provision was made for tax this property as the investment of said company in the State. They reported, cording to the requirement, a detailed statement of their property, with its value. was accepted, and a tax imposed upon it as so much capital stock, bringing it un the general law taxing corporation stocks in the State. But the Auditor Genera the State, under his construction of the Act, required of this company that t should not only pay the taxes on the amount set forth in that original statem but that they should make a full statement, covering not only the property in original report, but also whatever additional property they might have acquired th after, and of the change in the nature and value of the same from year to year. compliance with the request of the Auditor General, they made the required st ments; but under a protest, from time to time, declaring that he had no righ demand such statements, that there was no authority for any other report than t fixed in the Act of 1848, and claiming that by that Act of Assembly the basis of ta tion was limited and fixed to the amount contained in the original report made in p suance of it; and reserving to themselves all rights to adjustment in a future set ment. They continued from the year 1848 until 1857 to make these annual st ments under protest, and they paid into the Treasury each year the amount of ta assessed on the statement so made. During this time they overpaid to the Comm wealth about $81,000 These reports, besides the property reported in the orig statement, and which alone should have been reported, covered all the expenditu of money for repairs, alterations and enlargement of the canal, railroads and coal wo the manufacture of cars, purchase and replacing of stationary engines, &c., &c., co ing the endless details of the account current of the expenditures of a coal and tra portation company in a large business, and a considerable amount of real estate t was not required for carrying on the business of the company, nor connected w its legitimate operations; but held outside of and not needed for the purposes of company. Here was a manifest error against the company, both in making the port and paying the money, which they were not bound to pay, and which the S had no authority to demand. On the 14th of May, 1858, the company settled w the Auditor General, and asked that this surplus money paid to the Commonwea on these erroneous statements should be allowed to their credit, on their account rent with the State. But the Auditor General refused to comply with such requ saying that he had no authority for so doing. From this decision the company pealed to the Court of Common Pleas of Dauphin county. The Court sustained Auditor General. They then went to the Supreme Court. The Supreme Co reversed the Court below, saying that all the company were liable to pay taxes was the property stated in the original schedule rendered under the Act of 1848, t all the excess which had been paid was an overpayment to which the State was entitled.

The case went back to the Court of Common Pleas and was tried over. But Court while admitting the principle as settled by the Supreme Court, that the Ac 1848 had fixed the amount of the original report of the company under that Ac the only basis upon which they were liable to be taxed, yet held that as the overp ment had been made under a mistake in law, through a misconception of the l rights of the company, they could not legally recover it back. The proposition this bill is to authorize the Auditor General to settle the accounts of this compa and to allow them as a credit on their account current, whatever amount they have overpaid the State, up to the time of the settlement with the Auditor Gen from which they appealed. I am aware that we are here for aid against the exis law, as interpreted by a very respectable tribunal, and I am aware that that inter tation of the law makes the case *prima facie* against us. But I propose briefl examine the decision of the Court of Common Please of Dauphin county, and I th it will become apparent to every fair mind that we have not only equity with us, that the law also, if not with us, is at least very doubtfully against us, and for

pose of a full understanding, I will quote the points of the charge, with a brief he argument of the Court. They say:

It is conceded in the present trial that all the taxes due by the Company (the aware and Hudson Canal Company) have been paid, but it claims and shows that as overpaid to the amount of $81,282 92. Can it recover them back. It must oneeded that this money was paid and received under a mutual mistake of the law. These positions have been assumed by the defendant's (Canal Company) counsel er some or either of which it claims a right to recover.

First—The money having been paid by mistake, when nothing was legally due, not be retained in *good conscience.*

Second—That the payment was on an open running account, and therefore balance overpaid must be refunded; and then the payment was made under est.

We will examine each in its order. A clear distinction is taken in numerous s between payments to private individuals and that of taxes to public officers. as held in the borough of Allentown *vs.* Sayer, 8 Harris, 421, that taxes paid by ake could not be taken back from the borough. Judge Houston says in Com- sioners *vs.* Dobbins, 7 Watts, 514, that when a party continues to pay taxes for ries of years, when he might have redress by appeal, there are many objections ecovering them back In Taylor *vs.* The Board of Health, 7 Casey, 73, it is held when an unconstitutional tax was collected, if not paid under protest it could be recovered back. The City of Philadelphia *vs.* Cooke fully recognizes the eiple that money paid under a mistake of law cannot be recovered back. The reason we therefore hold to be invalid.

Although no formal settlement was ever made of the accounts of this corpora- at the Department between the years 1848 and 1858, from which last the pre- appeal was taken, yet the party paying sent its half yearly statement of the unt conceded on both sides to be due, and regularly paid it over; no more ever or could be claimed at the Treasury, provided that the return as to the value of property or amount invested was correct. No formal settlement, it is said, is made by the Auditor General and State Treasurer, except when a dispute arises, here is neglect to make payment; we, therefore, cannot consider this a mere pay- t on account from time to time, but as a regular half yearly liquidation of bal- es. It was so considered at the time by both the parties paying and receiving, no subsequent dispute between other officers can throw it open, unless those on part of the Government afterwards discovered or believed that a mistake existed. mistake, action or omission on the part of State officers can injuriously affect the mmonwealth, but even the most solemn settlements may be revised under the Act 1846, to increase the balance due.

f the protest which regularly accompanied these half yearly payments had been ected against the increased taxation, it would have precisely met the present case, given a right of recovery, but it was confined to an entirely different object.— se protests are exact copies from the same original, and commencing in the year 8, soon after the first payment, and accompanying each remittance, down to the r 1857, are directed against the Act of 1840, which first imposes a tax on this poration. It contends that by the terms of its charter the capital stock is not tax- e at all, and protests against the validity of the third section of the Act of 1848, makes the protest under such protest, to wit: a denial of the validity of that , and the right of the State to impose any tax under it. What shows clearly that protest applies to that alone, and has no reference to the increased taxation is, first letter was written in 1848, when there had been no increase—was continued ough 1849 and 1850, and even afterwards. The protest should be clear, definite directly pointed against the objectionable tax in order to be available; one ched in uncertain language, and aimed at a different subject, rather tends to mis- l than to guard the party receiving against error. There was no coercion in the

present case, no protest, and the moneys voluntarily paid into the Treasury can be recovered back.

"The sum of $4,804 48, paid twice into the treasury on account of the compan land, cannot be retained with a good conscience, and must be refunded. The j will therefore certify that balance in favor of the defendant,

"Both parties took an exception to the charge The jury rendered a verdict the defendents for $4,804 48."

I have examined all the cases referred to by the court upon which they based th decision in this case, and while I admit their validity, and that the doctrines l down in them are unquestionably sound, I think the court fell into a great error their application to this case. While the principles laid down in them are prope and soundly applied to the questions raised in the cases themselves no fair and f application can give them scope enough to cover this case. It is true they all go establish the doctrine that money paid under mistake (of law) cannot be recover back. But the cases themselves limit the application of this doctrine to two case

First, when money is paid to an individual under a mistake of legal rights, as instance when a man pays another a debt upon which the statute of limitation h run, or when an administrator without a refunding receipt has paid a creditor of t estate his debt in full when the assets were only sufficient to pay a pro rata. He though in the latter instances it may bear hard upon the administrator, yet the f that the debt is due and unpaid, and that the creditor is justly entitled to the pa ment of his debt in full, in fairness and equity sustains the principles. In bo cases a debt is due, and the creditor is entitled to it. But it is conceded that t money overpaid by this company was not due. The State never had any legal rig to it, and therefore cannot claim the benefit of this doctrine.

Secondly, the case is where money is paid under mistake to public officers. H here the doctrine is again limited in its application, and the ground upon which decisions go, is not that there is any justice in it, but the inconvenience, if not t impracticability of repayment, and every case wherein the doctrine is laid down, i case deciding questions arising out of the payment of municipal taxes, and it is d tinctly and expressly placed upon the peculiar reasons existing in the nature a practical operations of the municipal tax system, and is by no means enunciated a principle of general application. But in this case, the reasons do not exist, and t principle cannot, by any fair interpretation, apply. There is, indeed, a very wi difference in the mode of raising municipal taxes, and the collection of corporati stock taxes by the Commonwealth. These two classes of taxes are levied, collect and received in a mode very different, and attended with very different incidents. the one case assessors, collectors, receivers and treasurers are elected by law, a auditors are appointed to settle their accounts Their accounts are closed and co cluded at certain stated periods, and in most cases a portion of the very money c lected is allowed them in compensation for their services. In these cases it is ma festly a matter of necessity that there should be no refunding of over pay; at lea it is sound public policy. For here re-opening and re-settling of accounts, and refun ing of moneys, after settlement made, after bonds cancelled, securities discharge and after a partial or entire distribution of the money to its appropriate purpose which is generally the case as fast as it is raised, could not fail to be attended wi interminable difficulty, disturbance and litigation, and in many cases would be utte ly impracticable These are the reasons upon which this class of cases turns [redacted], a in reference to the matter in question in these cases, the reasons are sound and co clusive. But no such reasons exist in the case before us. There is no such mach nery used for the collection of these stock taxes. The companies under oath asse the taxes themselves, and pay them directly to the State. They make a simple, d rect report of the amount on which they are taxable, at a certain rate, and pay th amount the report calls for to the State Treasurer. There are no intervening asses ors, collectors, receivers and auditors, each to be settled with and to retain portio

of the money collected for services. There are no amounts levied and measured to meet particular purposes, and to be specifically appropriated to those particular purposes, and exhausted by them as fast as appropriated. There are no final and conclusive settlements; no receipts in full given. The accounts are uniformly left open. The court in this case said: "No formal settlement is ever made by the Auditor General and State Treasurer, except where a dispute arises, or there is a neglect to make payment." Again, the Court took exceptions to the protest under which these payments were made. They declared the protest insufficient by reason of its vagueness, or that it did not cover the subject matter of dispute. It was general, going on the whole taxes claimed by the Commonwealth, and reserved all rights to the Company. The less is contained in the greater, and while it may have covered more than was necessary, it certainly, in reserving *all rights*, covered these over-payments, and was the only protest naturally to be expected from any prudent source, unless under the instruction of a lawyer, guided by some arbitrary specific decision. Technicalities should be laid aside here, and broader principles should settle the questions arising out of the dealings of the State, with her largest and most vital interests. We hear much of "broad State policy" in these times, but it seems quibbles and technicalities have yet their day in the Courts. There let them remain; let them not enter here, where it is our higher duty to mould and shape the destiny and character of a great Commonwealth So much for the law of the case. Now let us look at the equities of this question for a moment. If, then, there is no formal settlement, no closing up of the accounts, can any harm be done by stating the accounts between the Commonwealth and this company, and allowing them a credit for the money which they have overpaid. Had the accounts been closed and balanced, there might or there might not, according to circumstances, be difficulty in opening them again. But as there never has been any formal or conclusive settlement, and the accounts with the Company have never been closed, what injury can result from setting the account? If the State were to be put in any worse position than she would have been if this over payment had not been made, there would be reason against the bill. But it is impossible that the State can in any way suffer any injury by the passage of this bill. She will lose nothing of her own, but will simply do right, do justice, just what she demands from all her citizens. The company ask for no refunding of money, but simply that the amount proved on trial to have been overpaid may be allowed them on their account current to their credit.

In every case of a mistake against the State, she demands and enforces the correction of the errors. The court say in this very case, "no action, mistake or omission on the part of State officers, can injuriously affect the Commonwealth, but even the most solemn settlement may be revised under the Act of 1846, to increase the balance due. Now here, sir, we do not ask the revision of a final settlement. We simply ask that a settlement may be made to correct a mistake. Upon what principles of equity or fairness can the Commonwealth set up one rule for herself and another for her subjects—that when an error has been made against herself she will enforce its correction! But when the mistake is against the citizen, there shall be no remedy. Shall this great State proclaim to her citizens that she has adopted the motto that "might makes right," and because she has the power she will avail herself of all advantages, fair and unfair, against her own subjects? Whenever illegally or erroneously she has got possession of the property of any of her people shall she spurn their appeals to her justice, and tell them her power is for their oppression, and not their preservation? Shall she turn miser, and in her avarice and rapacity become a terror and a scourge to her citizens by absorbing their substance and paralyzing their energies? I trust not. Let not her fair fame be tarnished by any such unholy procedure Rather let her stand nobly forth, in all the majesty of a great State, strong in the love and affection of her people, and let her perpetuate their devotion and bind them more firmly and cordially to her interests and her glory, in grateful return for her justice, her equity, her generosity and maternal care for all her children.